

## § 260.9

## 16 CFR Ch. I (1–14 Edition)

will not only break down, but also will decompose into elements found in nature.

*Example 3:* A marketer advertises its shampoo as “biodegradable” without qualification. The advertisement makes clear that only the shampoo, and not the bottle, is biodegradable. The marketer has competent and reliable scientific evidence demonstrating that the shampoo, which is customarily disposed in sewage systems, will break down and decompose into elements found in nature in a reasonably short period of time in the sewage system environment. Therefore, the claim is not deceptive.

*Example 4:* A plastic six-pack ring carrier is marked with a small diamond. Several state laws require that the carriers be marked with this symbol to indicate that they meet certain degradability standards if the carriers are littered. The use of the diamond by itself, in an inconspicuous location, does not constitute a degradable claim. Consumers are unlikely to interpret an inconspicuous diamond symbol, without more, as an unqualified photodegradable claim.<sup>46</sup>

*Example 5:* A fiber pot containing a plant is labeled “biodegradable.” The pot is customarily buried in the soil along with the plant. Once buried, the pot fully decomposes during the growing season, allowing the roots of the plant to grow into the surrounding soil. The unqualified claim is not deceptive.

### § 260.9 Free-of claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is free of, or does not contain or use, a substance. Such claims should be clearly and prominently qualified to the extent necessary to avoid deception.

(b) A truthful claim that a product, package, or service is free of, or does not contain or use, a substance may nevertheless be deceptive if:

(1) The product, package, or service contains or uses substances that pose the same or similar environmental risks as the substance that is not present; or

(2) The substance has not been associated with the product category.

(c) Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if:

<sup>46</sup> The Guides’ treatment of unqualified degradable claims is intended to help prevent deception and is not intended to establish performance standards to ensure the degradability of products when littered.

(1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level<sup>47</sup>;

(2) The substance’s presence does not cause material harm that consumers typically associate with that substance; and

(3) The substance has not been added intentionally to the product.

*Example 1:* A package of t-shirts is labeled “Shirts made with a chlorine-free bleaching process.” The shirts, however, are bleached with a process that releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim overstates the product’s benefits because reasonable consumers likely would interpret it to mean that the product’s manufacture does not cause any of the environmental risks posed by chlorine bleaching. A substantiated claim, however, that the shirts were “bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching” would not be deceptive.

*Example 2:* A manufacturer advertises its insulation as “formaldehyde free.” Although the manufacturer does not use formaldehyde as a binding agent to produce the insulation, tests show that the insulation still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that its insulation emits less formaldehyde than is typically present in outdoor environments. Further, the seller has substantiation that the trace amounts of formaldehyde emitted by the insulation do not cause material harm that consumers typically associate with formaldehyde. In this context, the trace levels of formaldehyde emissions likely are inconsequential to consumers. Therefore, the seller’s free-of claim would not be deceptive.

### § 260.10 Non-toxic claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is non-toxic. Non-toxic claims should be clearly and

<sup>47</sup> “Trace contaminant” and “background level” are imprecise terms, although allowable manufacturing “trace contaminants” may be defined according to the product area concerned. What constitutes a trace amount or background level depends on the substance at issue, and requires a case-by-case analysis.